Annual Report

OF THE LIBRARIAN

OF

CONGRESS

FOR THE FISCAL YEAR ENDING

JUNE 30, 1941

Washington : 1942

Register of Copyrights

REPORT TO THE LIBRARIAN OF CONGRESS

Washington, September 15, 1941

SIR: In past years the Register's report has taken more or less the form of a mere repetition of statistics dealing with the amount of registrations made, copyright deposits received in the Copyright Office or thereafter transferred to the Library, fees received and the disposition thereof under the direction of Congress, as expressed in the Act. During the passage of the past two years there have been adopted new and salutary methods in the Copyright Office. The old accounting system has given place to more modern methods. A close liaison has been established between Library administration on the one hand and Copyright Office administration on the other, which has stimulated a mutual cooperation in favor of the functioning of certain aspects of the great Library machine. In these things the public has a general interest, and the Congress, as the representatives of the people, a special one. It seems, therefore, fitting that they should be made a matter of reference and of record here.

But there are other matters connected with the conduct of this Office which should be of intense interest not only to every author and to every copyright proprietor, but to every Member of Congress. I refer to questions arising in connection with the relations of the Copyright Office with that public which it was created to serve.

(*a*) Of outstanding importance in this connection is the decision of the United States Court of Appeals for the District of Columbia in the case of *Clement L. Bouvé, as Register of Copyrights, Appellant v. Twentieth Century-Fox Film Corp.*,[1] based *inter alia* upon the adequacy and nature, for the purposes of the deposit provisions of Section 12, of material offered for registration and upon the importance of the payment of copyright fees as a legislative consideration.

(*b*) The Committee of Congress which reported the bill which became the present act, found occasion to observe:

[1] See also *King Features Syndicate, Inc.*, v. *Clement L. Bouvé, as Register of Copyrights*, District Court of the United States for the District of Columbia, Dec. 18, 1940.

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"In enacting a copyright law Congress must consider, as has been already stated, two questions: First, how much will the legislation stimulate the producer and so benefit the public; and second, how much will the monopoly granted be detrimental to the public? The granting of such exclusive rights under the proper terms and conditions confers a benefit upon the public that outweighs the evils of the temporary monopoly." (Report 2222 to accompany H. R. 28192, 60th Cong., 2nd Sess., House of Representatives, p. 7)

The Copyright Office is manifestly an instrument of government created by Congress, the main function of which is to carry out the legislative will. One of the purposes of this report is to call your attention, the attention of Congress and that of the public to attempts to thwart that will, with which the undersigned has been and is still confronted in connection with the administration of the Office under the Act and to suggest in a general way how a solution of these problems can and, in the opinion of the undersigned, should be effected by amendatory legislation.

Receipts

The gross receipts during the year were $374,125.35. There was a balance on hand July 1, 1940 of $41,303.06, making a total sum of $415,428.41 to be accounted for. Of this sum $8,325.30, representing a balance of copyright fees earned during June 1940, were deposited as Miscellaneous Receipts in the Treasury in July 1940. The earned fees for the fiscal year 1941 were $347,430.60. Of this amount there was deposited as Miscellaneous Receipts in the Treasury the sum of $343,935.30, making a total of $352,260.60 thus deposited. There was refunded as excess fees, or as fees for articles not registrable, $20,277.62. A balance of $42,890.19 was carried over from the fiscal year 1941, consisting of the following items: (1) fees for unfinished business material not yet cleared, $12,270.27; (2) deposit accounts credit balance, $27,124.62; (3) fees earned in June of the fiscal year 1941, to be deposited as Miscellaneous Receipts in the Treasury in July 1941, $3,495.30. The sum of the amounts turned into the Treasury during the fiscal year 1941, amounting to $352,260.60, together with the sum of $20,277.62 refunded, plus the amount of $42,890.19 made up of the three items (1), (2) and (3), constitute the amount of $415,428.41.

The annual applied fees since July 1, 1897 are shown in Exhibit C. (See p. 400.)

Expenditures

In prior reports, under the title "Expenditures," it has for many years past been the custom of the Copyright Office to aggregate its

"expenditures," compare them with the fees received and refer to the result as a profit or loss of the Copyright Office. The purpose of this statement was to inform the Librarian and the public, through the Librarian's annual report—in which, under Section 51 of the Act, the annual report of the Register is to be printed—of the extent to which the Copyright Office is or is not a self-sustaining institution.

The items of expenditure which have hitherto been reported for this purpose have been the cost for the year in salaries, stationery, postage stamps and car tokens expended in copyright business. However, there are other costs of operation of the Copyright Office which should definitely be taken into consideration in determining this question of profit or loss. First, the cost of the *Catalog of Copyright Entries*. Under the Copyright Act the obligation of compiling this catalog, together with its indexes, as well as of having it printed, is a duty specifically laid upon the Register of Copyrights and, as a matter of fact and common sense, should be considered a Copyright Office cost. There is another item known as "Printing and Binding, General" for the Copyright Office, to distinguish it from the printing done in connection with the publication of the *Catalog*. This is obviously another cost of administering the Copyright Office.

Shortly prior to the beginning of the fiscal year, it was wisely decided to place the estimating of the expenditures in connection with the appropriation for the *Catalog of Copyright Entries* in the hands of the Copyright Office, which submits to the Administrative Assistant to the Librarian a copy of these estimates. An allotment of the sum estimated to be required for the item of "Printing and Binding, General" was set up by the Library. In connection with this allotment, also, the making of estimates for the cost of items included therein, when and as needed, was turned over to the Copyright Office. Requisitions based on the estimates of such items are now prepared in the Copyright Office. This step is of outstanding assistance to the Register of Copyrights, enabling him, as it does, to keep track of situations with respect to which under former practice he had only a hazy conception.

The total obligation for salaries for the fiscal year 1941 was $276,552.20, which includes a payment of $108.00 made on July 2, 1941. The expenditures for stationery, postage and transportation were $1,816.43.

As far as the cost of the *Catalog of Copyright Entries* is concerned, it was impossible to state on June 30, 1941 just what the cost involved would be, for at that date all the bills had not been received from the Government Printing Office. Thus far bills received and paid

amounted to $37,878.09, leaving a balance of $21,721.91 of the $59,600 appropriated for printing the *Catalog of Copyright Entries* and decisions of the United States Courts involving copyright.[2] The bills covered all the *Catalog* material through the month of February 1941, with the exception of the music catalog for January 1941 and the music index for the calendar year 1940. Generally speaking, the estimates made have exceeded bills received. In view of the abnormally large number of registrations reflected in the volumes of the *Catalog* printed under this appropriation, estimates have been limited to the printing of the *Catalog*, which is required as a statutory duty. It is believed and hoped that the actual cost of the *Catalog* for the fiscal year will not exceed $59,600, the amount of the appropriation. In view of the uncertainty as to what that exact cost will be, due to the absence of the receipt of the bills, the cost of the *Catalog* for the present fiscal year may turn out to be less than the amount of the appropriation. However, in estimating the cost of the *Catalog* the only safe figure to announce at this time is $59,600, the amount of the appropriation.

The cost of the item of "Printing and Binding, General," based on the allotment for that purpose prescribed by the Library of Congress, is $9,163.01.

The sum total of the salaries obligated, the appropriation for the *Catalog of Copyright Entries*, money expended on "Printing and Binding, General" and miscellaneous stationery is $347,131.64. This amount deducted from the fees earned in the fiscal year ending June 1941, $347,430.60, leaves a sum to the credit of the Copyright Office of $298.96.

During the period of forty-four years, 1897 to 1941, the annual copyright business, as evidenced by the applied fees, has increased over sixfold. During these forty-four years since the organization of the present Copyright Office, the copyright fees applied have amounted to a grand total of $7,244,079.60 and the total copyright registrations have reached the figure of 5,894,265.

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[2] As of September 19, bills paid, $46,835.17, leaving a balance of $12,764.83.

Copyright Registrations and Fees

FISCAL YEAR 1941

Registrations for prints and labels numbered	7,152	at $6	$42,912.00
Registrations for published works numbered	115,113	at $2	230,226.00
Registrations for published photographs without certificates numbered	1,587	at $1	1,587.00
Registrations for unpublished works numbered	46,453	at $1	46,453.00
Registrations for renewals of prints and labels numbered	19	at $6	114.00
Registrations for renewals, all other classes, numbered	10,323	at $1	10,323.00
Total number of registrations	180,647		
Fees for registrations			$331,615.00
Fees for recording 3,266 assignments		$10,470.00	
Fees for indexing 17,216 transfers of proprietorship		1,721.60	
Fees for 1,187 certified copies of record		1,187.00	
Fees for 464 notices of user recorded		464.00	
Fees for searches made at $1 per hour of time consumed		1,973.00	15,815.60
Total fees earned, fiscal year 1941			$347,430.60

Summary of Copyright Business

FISCAL YEAR 1941

Balance on hand July 1, 1940			$41,303.06
Gross receipts July 1, 1940 to June 30, 1941			374,125.35
Total to be accounted for			$415,428.41
Refunded		$20,277.62	
Deposited as earned fees		352,260.60	
Balance carried over to July 1, 1941:			
Fees earned in June 1941 but not deposited until July 1941	$3,495.30		
Unfinished Business balance	12,270.27		
Deposit Accounts balance	27,124.62	42,890.19	415,428.41

Correspondence

The business of the Copyright Office involves daily contact with the public, transacted for the most part through correspondence. The total letters and parcels received during the fiscal year numbered 249,564, while the letters, parcels, etc. dispatched numbered 282,507. Both figures show an increase over last year.

Copyright Deposits

The total number of separate articles deposited in compliance with the copyright law which were registered during the fiscal year is 283,737. The number of these articles in each class for the last five fiscal years is shown in Exhibit E.

Following closer contacts and closer cooperation between the Copyright Office and the Library of Congress which have come into being in the course of the past two fiscal years, the number of works received by the Library as a result of requests sent to the Copyright Office from the Library has notably increased. This is made apparent by reference to the last five annual reports of the Register of Copyrights.

During the fiscal years 1937, 1938 and 1939,[3] a number totaling 1,373 works were received by the Library as the result of requests addressed by it to the Copyright Office, making an average of 491 such works for each of the fiscal years concerned. However, for the fiscal year 1940 alone, 2,636 works were received by the Library in response to such requests.[4] During the present fiscal year 2,665 such works were received in response to requests addressed to delinquent copyright owners, and in addition thereto eighteen additional works were received within the demand period where official demands were made, making a total of 2,683.

However, there is good reason to believe that this number, encouraging as it may appear, represents no more than a fraction of the cases occurring all over the United States in which works are published with copyright notice, of which neither the Library nor the Register of Copyrights can possibly have a complete knowledge and in connection with which the copyright owner makes no attempt whatsoever to meet the requirements of Section 12. Where demands made were not fulfilled, it was necessary in twenty-six cases to bring the matter to the attention of the Attorney General, in all of which cases a final disposition has not as yet been reached. The Copyright Office cannot sufficiently express its appreciation of the courteous and efficient cooperation of the Department of Justice in connection with these cases.

It should be noted that a request made of an author or a publisher for one title frequently results in the deposit with the Copyright Office of other titles by the same author or publisher which have not been previously submitted.

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[3] *Annual Report of the Register of Copyrights* for the fiscal year 1937, p. 3; for the fiscal year 1938, p. 3; for the fiscal year 1939, p. 3.

[4] *Annual Report of the Register of Copyrights* for the fiscal year 1940, p. 3.

Our copyright laws have required the deposit of copies for the use of the Library of Congress, and the act in force demands a deposit of two copies of American books and one of foreign books registered. The act provides that, of the works deposited for copyright, the Librarian of Congress may determine (1) what books or other articles shall be transferred to the permanent collections of the Library of Congress, including the Law Library, (2) what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange or (3) be transferred to other governmental libraries in the District of Columbia for use therein. The law further provides (4) that articles remaining undisposed of may upon specified conditions be returned to the authors or copyright proprietors.

During the fiscal year a total of 171,115 current articles deposited have been transferred to the Library of Congress. This number included 67,979 books, 74,460 periodical numbers, 22,530 pieces of music, 2,560 maps and 1,586 photographs and engravings.

Under authority of Section 59 of the Act of March 4, 1909, 1,367 books were transferred during the fiscal year to other governmental libraries in the District of Columbia for use therein. Under this transfer, up to June 30, 1941 the following libraries have since 1909 received the total number of books indicated below:

Department of Agriculture, 4,618; Department of Commerce, 23,076; Navy Department, 1,879; Treasury Department, 1,496; Bureau of Education, 22,749; Federal Trade Commission, 30,266; Bureau of Standards, 2,094; Army Medical Library, 10,026; Walter Reed Hospital, 2,884; Engineer School, Corps of Engineers, 3,202; Soldiers' Home, 1,600; Public Library of the District of Columbia, 64,082. A number of other libraries have received a smaller number of books. In all, 191,020 volumes have been thus distributed during the last thirty-two years.

The Copyright Act authorizes the return to copyright claimants of such deposits as are not needed by the Library of Congress or the Copyright Office. Under such authority, 3,296 motion picture films were returned during the fiscal year.

The New Accounting System of the Copyright Office

The new accounting system established in the Copyright Office with the assistance and under the guidance of representatives of the General Accounting Office has affected the handling of the work in the Copyright Office as a whole in various ways. While it must be admitted that the system has to a certain extent increased the work

in the Deposit and Periodical Section, as well as in the Examining and Mails, Files and Index Sections, it has been of marked advantage to the Searching Unit.

For instance, in the Master Index Group of the Mails, Files and Index Section the new system has made it necessary to revise all cards made for incoming mail with fees enclosed, since the cards under the new system are now used as permanent records in the Accounting Section. This has necessitated the full time of two extra clerks for revision and one extra clerk for indexing. They have had to be borrowed from the other units, thereby allowing other work to be postponed and to accumulate. Aside from this difficulty, which it is believed may, under certain circumstances, be overcome to a great extent, the installation of the new system has raised the quality of the work done by the indexers and provided a fairer basis of judging the quality of their work. The delayed return of the original card until the money received has been used and the stamping of the entry numbers on the Deposit Account cards are decided helps in the searching, for they are effective in providing a systematic check on the closing of the day's work.

From the standpoint of the Accounting Section of the Copyright Office, the new system installed shows little difference in basic principles from that of the old system. On the one hand, the handling of details has in certain respects increased and, on the other, the elimination of several unnecessary steps has facilitated the completion of the statistical data needed from day to day.

The new system, which has been standardized by the use of forms prescribed by the General Accounting Office, shows a very detailed picture of the daily work for any month, and—what is of particular satisfaction to the undersigned—has resulted in giving the Accounts Office of the Library a complete picture of the work involved. The General Accounting Office is furnished with the Account Current rendered each month and a complete detailed statement of every transaction for the current month.

In connection with the establishment of this system the undersigned cannot too deeply express his appreciation of the constant courtesy and unflagging patience of Mr. Charles F. Taylor and Mr. Raymond B. Jeffrey, of the General Accounting Office.

The Establishment of the Loose-leaf Registration System

On July 1, 1940 the first step was taken in the installation of a new system of registration and certification in the Copyright Office with a

view to achieving greater promptness both in recording the claims and issuing the certificates. The new form of certificate is based upon the form used for many years in the Patent Office in connection with the registration of claims to copyright in commercial prints and labels when the handling of that material was under the jurisdiction of the Commissioner of Patents. Typewriting machines are now used for filling in the necessary data, so that, by means of a carbon sheet, two copies of the certificate can be made by one operation, the original being then dispatched to the claimant and the carbon copy retained for ultimate binding in a permanent volume of certificates. Under the former system, which involved the making of manuscript entries in bound volumes, the bound record book could only be used by one clerk at a time for making the entries, whereas under the new system many certificates of the same class can be made simultaneously. The small card form of certificate which has heretofore been issued in longhand has been discontinued gradually during the course of the present fiscal year, as it is not suited to this purpose.

The change has been adopted for various reasons, some economic and some addressing themselves particularly to what is conceived to be improvement in administering this bureau of the government. The administration of the Office requires the handling of many problems calling for a solution which must, on the one hand, deal with the subject matter, not only from the standpoint of any particular one of the sections of the Copyright Office, but from that of the coordination of the work of those sections taken as a whole.

But for a sympathetic understanding of these problems on the part of the Library and a thorough recognition of the obvious necessity of the equipment required for their solution, coupled with the actual providing of such equipment, this reform in the matter of record-making, of which the Copyright Office has for years been in need, could not have been accomplished.

Coordination of the Work of the Copyright Office With That of the Divisions of the Library

On October 3, 1940 the Librarian appointed a committee to study the possibilities of integration and coordination of the activities of the Copyright Office with the divisions of the Library. The committee consisted of Mr. L. Quincy Mumford, Director of the Processing Department, Mr. John Lester Nolan, Chief of the Catalog Preparation and Maintenance Division, Mr. John W. Cronin, Chief of the Card Division, and the undersigned, who was designated to act as chairman.

Lengthy conferences were held, supplemented by extensive conversations and discussions throughout the period October 3, 1940 to January 15, 1941. Various recommendations were made by the committee and received the approval of the Librarian, such as further study of the advisability of printing the cumulative indexes for the purposes of the Copyright Office, further examination of possible uses which the Maps Division might make of the copyright number on map entries the forwarding of copies of copyrighted periodicals received by the Copyright Office to the Chief of the Periodicals Division and the advisability of omitting the copyright notice on the cards printed by the Card Division of the Library. The Copyright Office welcomes the opportunity of being of what assistance it may in this matter, realizing the necessity of the closest cooperation between the Library and the Office in this field.

Recommendation in the Direction of Equalization of Copyright Fees

Prior to the effective date of the Act of Congress of July 31, 1939, which transferred to the Register of Copyrights jurisdiction over the registration of commercial prints and labels, the fees for registration of material recorded in the Copyright Office were divided roughly into two classes—$2.00 for the registration and issuance of certificates of registration of material, copyright of which is obtained by publication with copyright notice, and $1.00 in the case of any unpublished work registered as unpublished under Section 11 of the Act (Sec. 61). By the Act of July 31, 1939 the registration fee for commercial prints and labels was maintained at the amount of $6.00—the same amount at which such fee had been set by Congress in Section 3 of the Act of June 18, 1874 and maintained for the sixty-six years preceding the change of jurisdiction from the Commissioner of Patents to the Register of Copyrights.

The maintenance of the $6.00 fee has given rise to some dissatisfaction in interested quarters. And it must be admitted that from one point of view this sense of dissatisfaction is not difficult to understand. A, who publishes with copyright notice an encyclopedic work, can obtain registration and certification thereof for a fee of $2.00; whereas B, the copyright owner of a mere commercial print, must pay three times as much for the same service. But it must be borne in mind that the owner of the encyclopedic work (which may have a retail price at $150 or $500 or more) must, in order to obtain registration and certification, deposit two complete copies ot the best edition thereof with the Copyright Office for the enrichment of the Library of

Congress and incur thereby a very considerable financial sacrifice; whereas B, by the deposit of two copies of his commercial prints or labels suffers financially, as a general rule, to an infinitely less extent.

On the other hand, a work embodied in copyrighted leaflets of published written material representing a bona fide edition of such material may be registered for $2.00 and the retail price may be practically nil; whereas the commercial print or label may conceivably represent a far greater initial cost, and the two copies deposited a far greater value, than two of the leaflets referred to and yet the registrant must pay a registration fee of $6.00. Or, worse yet, it might be argued (although recognizing that many unpublished works may greatly exceed the cost or value of commercial prints or labels) all unpublished works—which include manuscripts which may have no commercial value at all—which in an unpublished state are entitled to copyright, may be registered at a cost of $1.00; whereas the copyright owner of the commercial print or label must pay $6.00.

Although apparent inequities arising in many instances seem to be eliminated by counterbalancing considerations, the contemplation of the registration for $1.00 of a manuscript scrawl of so-called "music," which costs the applicant the price of a half-sheet of music paper and a pen and ink (or even a pencil), as opposed to the registration for $6.00, coupled with two copies of a beautiful and artistic commercial print or label, for which the copyright owner may perhaps have had to pay the artist $250, more or less, shocks one's sense of proportion.

It seems to the undersigned that something in the way of equalization of fees should be accomplished. Copyright protection is a monopoly (Report No. 2222 to accompany H. R. 28192, 60th Cong., 2nd Sess., p. 7) to be enjoyed under the conditions of the statutory grant. The copyright term extends for twenty-eight years from the first publication with copyright notice, with respect to published works, or from the date of the due filing of the application with a copy of the work in the case of unpublished works, subject to renewal for an additional twenty-eight years in both cases—a total of fifty-six years.

Congress has always felt that the fee for the registration and certification of unpublished works should be less than that of published works. The distinction cannot be based on a supposed difference between the type of the services rendered in connection with both classes, for both published and unpublished works are registered and a certificate of registration is issued. An excellent reason for the distinction is, however, to be found in the fact that, while thousands of unpublished copyright works are never thereafter published, thousands of them are and Section 11 provides that the acquisition of

copyright in unpublished works "shall not exempt the copyright proprietor from the deposit of copies under sections twelve and thirteen of this Act, where the work is later reproduced in copies for sale." This means that, upon such publication, the proprietor of the hitherto unpublished work is put to added expense. It is therefore felt that the fee of $1.00 for unpublished works should remain.

However, it is recommended that the registration fee for published works should be equalized. The observation has often been noted that the Copyright Office is not intended to be a revenue-producing institution. The fact is that it has, in a very definite sense, always been a revenue-producing institution, in that fees applied are turned into the Miscellaneous Receipts of the United States Treasury. The undersigned finds nothing inappropriate in suggesting that, in view of the extraordinary sacrifices which the present emergency makes and is bound to make upon the public purse, a registration fee of $3.00 should be required as one of the conditions of the enjoyment of the copyright monopoly in the case of all published copyrighted works.

JUDICIAL INTERPRETATION OF THE COPYRIGHT ACT

For some years past efforts have been directed by the undersigned against what he has always considered attempts on the part of certain persons or interests to evade the intention of Congress to provide for the enrichment of the Library through copyright deposits. That, in one instance, these efforts have been misdirected is the opinion of the United States Court of Appeals for the District of Columbia as expressed in its decision of the case of *Register of Copyrights, Appellant, v. Twentieth Century-Fox Film Corporation.*[5]

The following statement of facts appears in the opinion:

> Appellee deposited in the Copyright Office two copies of printed matter, bound together in book from and entitled "In Old Chicago." It tendered two dollars in payment of the registration fee. The Register of Copyrights refused registration upon the ground that the material was not a *book* but, instead, was page proof of twenty *contributions to periodicals* within the meaning of Section 12 of the Copyright Act; hence, that each contribution must be separately registered; and that a separate fee of two dollars must be paid for the registration of each.

Inter alia the appellate Court states that

> The important consideration in the mind of the Register seems to be the number of fees which he is entitled to collect.

While the matter of the collection of fees prescribed by the act should be and always will be regarded as an important consideration by the

[5] See also *King Features Syndicate, Inc.*, v. *Clement L. Bouvé*, as Register of Copyrights (*supra* p. 359).

Register, he felt that the consideration of outstanding importance was the type of deposit which he is authorized to accept, bearing in mind that one of the basic functions of the deposit of copyrighted works is the enrichment of the Library of Congress.

No one more readily than the undersigned concedes the propriety on the part of any court to limit the statement of facts in the opinion to the extent which to the court seems sufficient for the purposes of its decision.

However, it is believed that the Librarian, as well as Congress, should have a fuller statement of the facts in order to determine whether, in the light of the interpretation placed upon the statute by a distinguished tribunal entrusted with the decisions of problems of the greatest moment to the government, the situation calls for remedial legislation.

On or before December 30, 1937, the Twentieth Century-Fox Film Corporation prepared twenty proof sheets of a serialization in newspaper form of the story entitled *In Old Chicago*, each proof sheet consisting of a separate chapter and each bearing a separate copyright notice. The District Court found that "the sheets are printed on one side only; each page has a separate copyright notice, and a résumé of the preceding pages; the statement "To be continued" is used at the end of the chapters; there is an absence of pagination; different grades of paper are used * * *" and "it is apparent from the face" of the material that "the purpose was to have it published in installments in periodicals." Prior to December 30, 1937 these twenty separate proof sheets were bound together in a paper cover and offered for sale to the public on December 30, 1937 with notice of copyright. This "publication" was found by the District Court to have been made "as a requisite for bringing suit to enforce registration." This appears further from the fact that the first chapter of the serialization appeared in published newspaper form four days later on January 3, 1938, but particularly from the fact that registration had been refused in two similar cases for reasons identical with those of the case at bar and for the further reason that the form of the copyright notice did not comply with the requirements of the act.

On January 13, 1938 the appellee deposited in the Copyright Office two copies of this material, applied for the registration of claim to copyright in this aggregation of copyrighted proof sheets and tendered $2 in payment of the registration fee. At that time ten chapters had already appeared in one newspaper before application for registration was made. The Register, relying in part on the wording of the

Copyright Act, refused to register the material in question as a book, on the ground that it consisted of twenty page proof copies of separate pages, to each of which was affixed a copyright notice intended for publication in a newspaper or newspapers.

Further, relying on the authority of the Supreme Court of the United States [6] which had held that, for the purpose of evading the payment of higher postage rates under the postal laws, a book could not be transformed into a periodical by changing its covers and calling it a periodical, the Register of Copyrights concluded that for the purpose of what, in his opinion, constituted an evasion of the payment of registration fees, as well as an evasion of the deposit required by Section 12, twenty separate page proof contributions to newspapers could not be converted into a book for the purposes of the Copyright Act.

He further refused to register it, on the ground that, assuming it for the sake of argument to be a book within the meaning of the Copyright Act, it was not registrable as such because it did not constitute a complete copy of the best edition of a book within the meaning of Section 12 of the Copyright Act. He felt that when Congress, having in mind the enrichment of its Library, provided in Section 12 that in the case of books the deposits should take the form of "two complete copies of the best edition thereof," it did not mean "two complete copies of page proof thereof."

In other words, registration of this material as a book was refused because the Register felt that, if deposits of page proof material were accepted, he would be reading into Section 12 and Section 59 of the Copyright Act a provision manifestly opposed to the intention of Congress, as well as to the terms of the act; and finally, such action on his part necessarily would result in seriously jeopardizing the Library copyright collections.

As stated in the Government's brief,

> The only difference which the [District] Court found between the material in question and page proof of contributions to periodicals was that "the sheets of page proof are bound together in the form of a book." (Fdg. 4, R. 20.)

The fact that a decision has been rendered by a court of high repute, the effect of which is to hold that deposits in the nature of page proof must in the case of books be accepted by the Register of Copyrights for the enrichment of the Library, is one which it is believed should be very definitely called to your attention, as well as to that of Congress, at this time.

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[6] Under the postal laws, "books are not turned into periodicals by number and sequence," and "magazines are not brought into the third class [books] by having a considerable number of pages stitched together." (*Smith* v. *Hitchcock*, 226 U. S. at 59; and *Houghton* v. *Payne*, 194 U. S. 88–104.)

In the brief filed on behalf of the appellant for the government, it was contended that

> even if the material in bound form be deemed to constitute a "book," the copies tendered for registration are not the "best edition." The Government submits that such "page proof" is not an "edition" at all within the meaning of the Act * * * The "edition" deposited must be in a form which in accordance with the purpose manifested in Section 59, may be included in a "library collection" for public use, and material in a form not intended for public use and published for the sole purpose of obtaining registration is therefore not an "edition" within the meaning of the Act. (p. 25)

These observations were, of course, addressed to the provision in Section 12 that, where applications for registration of claims to copyright in domestic books are involved, the application must be supported by deposits consisting of "two complete copies of the best edition thereof then published." In connection with this contention the court stated:

> As for the Government's contention that the copies deposited were not of the best edition, the answer is that they were of the only edition published.

Assuming what seems to be the fact, that the enrichment of the Library of Congress has been for ninety-five years one of the salient features of our copyright legislation, the Library and Patents Committees of Congress may feel called upon to give serious consideration to the issues decided in the case and to certain dicta contained in the opinion.

ATTEMPTS TO ABUSE THE COPYRIGHT ACT

Authorship is at once the begetter and the soul of ownership in literary property, whether viewed from the standpoint of common law or statutory copyright. The principle is recognized in Article 1, Section 8 of the Constitution, in which the authority of Congress to grant copyright under such terms as it sees fit is founded; in the committee report quoted below; in the statute itself[7]; and in the decisions of the federal courts[8] which have denied the validity of a

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[7] Sec. 2: "That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent . . ."

Sec. 4: "That the works for which copyright may be secured under this Act shall include all the writings of an author."

Sec. 8: "That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act . . ."

[8] *Jollie v. Jaques, et al.* (Fed. Cases 7437), 1852; *Norden v. Oliver Ditson Co., Inc.* (28 USPQ 163) Dist. Court, Dist. Mass., Jan. 9, 1936; *Cooper v. James*, May 16, 1914 (213 Fed. 871); *Arnstein v. Marks Music Corp.*, June 12, 1935 (11 Fed. Supp. 535).

claim of copyright based on an alleged authorship where that authorship was found to be lacking.

In the report[9] to accompany H. R. 28192, the bill which became the present act, the committee set forth the authority of Congress to pass copyright legislation, as well as the basic purposes of such legislation, in such language as to make the following excerpt a classic:

> The Constitution of the United States provides, Article I, Section 8—
>
> "Congress shall have the power to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."
>
> It will be noted that the language of this authority limits the power of Congress by several conditions. The object of all legislation must be (1) to promote science and the useful arts; (2) by securing for limited times to authors the exclusive right to their writings; (3) that the subjects which are to be secured are "the writings of authors." (p. 6)
>
> * * * * * * *
>
> The Constitution does not establish copyrights, but provides that Congress shall have the power to grant such rights if it thinks best. Not primarily for the benefit of the author, but primarily for the benefit of the public, such rights are given. Not that any particular class of citizens, however worthy, may benefit, but because the policy is believed to be for the benefit of the great body of the people, in that it will stimulate writing and invention, to give some bonus to authors and inventors.
>
> In enacting a copyright law Congress must consider, as has been already stated, two questions: First, how much will the legislation stimulate the producer and so benefit the public; and, second, how much will the monopoly granted be detrimental to the public? The granting of such exclusive rights, under the proper terms and conditions, confers a benefit upon the public that outweighs the evils of the temporary monopoly. (p. 7)

In furtherance of these purposes, the statute provides for a Copyright Office and for the administration thereof by a Register of Copyrights.[10] Under this statute Congress has plainly laid down the conditions under which registration should be made and a certificate of registration be issued.[11] As stated in the committee report

> Section 10 explains the method of obtaining registration of the claim to copyright and what must be done before the register of copyrights can issue to the claimant a certificate of registration. (p. 10)

The undersigned has assumed from the time of his incumbency that the administration of the Office shall be accomplished within the limi-

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[9] 60th Cong., 2d Sess., House of Representatives, Report No. 2222—To amend and consolidate the acts respecting copyright.

[10] Secs. 47, 48.

[11] Sec. 10: "That such person [referring to the phrase in Section 9: 'any person entitled thereto by this Act may secure copyright'] may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act."

tations, as well as to the full extent, of the authority conferred upon him by Congress and, taking his cue from the basic purposes of the law as defined in the committee report, has been guided by two rules of conduct—(1) that registration will be made unless he is convinced that he has no authority to permit it; (2) that registration will not consciously be accomplished when he is convinced that registration is forbidden by the act. Registration, when properly accomplished, is an act performed to the direct advantage of the copyright owner, as opposed, temporarily, to the direct interests of individual members of the public, in the sense that it is *prima facie* an official confirmance by the government of the copyright monopoly. When registration is properly denied, such denial is an act which operates as a government affirmance of a public right of unrestricted use in the material involved. Thus there is in the opinion of the undersigned imposed upon him the duty of never consciously losing sight of the interests of the copyright owner on the one hand or those of the public on the other.

Proceeding upon the above premise, the undersigned has been left with no recourse but to deny registration in numerous instances where applications for registration have, in his opinion, constituted examples of attempts to abuse the act and consequently the public interest.

Nor can the Register at any time permit himself consciously to overlook, in connection with the performance of his duties relating to the registration of claims to copyright, the true significance of the deposit requirements of the act, particularly in their application to the Library of Congress and to the use of its collections by those whose needs the Library was designed primarily to meet. During the proceedings of the third session of the Conference on Copyright, at which Dr. Herbert Putnam, while Librarian of Congress, presided and which were held at that Library March 13–16, 1906, at a time when, under the law in force, there was no provision that the deposit required by the act should constitute the best edition, the then Register of Copyrights pointed out the then great difficulty of the Copyright Office in obtaining good copies of copyrighted works. Referring to these observations, Dr. Putnam stated:

> It is this difficulty in the administration and experience of the office, in getting what the Government is really intended to get, which would make us disposed to be sure that we would get a really complete and perfect copy of a really creditable edition.

In the "Arguments Before the Committees on Patents of the Senate and House of Representatives, Conjointly, on the Bills (S. 6630

and H. R. 19853) To Amend and Consolidate the Acts Respecting Copyright," June 6, 1906, pages 14–15, the Librarian, referring to the conference on copyright from which quotation has been made above, stated *inter alia:*

> The original purpose of such deposits was the enrichment of the Library. This is clear from their history, both in this country and abroad. * * * The fact of the deposit has been and will be an integral part of the record, and in times past this could most readily be proved by the copies themselves, the law providing neither for a certificate to the claimant admitting the receipt of the deposit nor an entry in the official record showing it. But hereafter the fact of deposit will be proved by the certificate itself.

These views are reflected throughout the applicable provisions of the statute and the basic purpose of the deposit—the enrichment of the collections of the Library of Congress—is clearly manifested in Section 59. That the deposit shall promptly follow publication is a mandate addressed to the copyright owner of the work, yet the requirement of prompt deposit is being constantly evaded—and therewith the payment of the Copyright Office fees required by the act.

Aside from those of the type above mentioned, there are certain other abuses, the extent and nature of all of which are such that it is believed that they should be brought to your attention, as well as to that of Congress, as a part of this report.

1. Attempts to Avoid Prompt Deposit and the Payment of Copyright Fees

That the purpose of deposits is the enrichment of the Library of Congress has been announced by the highest authority.[12]

Section 12 of the act makes the deposit a mandatory duty on the part of the copyright owner and declares what form it shall take. Section 13 provides for the enforcement of this duty under the pain of a penalty involving a substantial fine, the loss of the copyright claimed and compensation to the Library of Congress for the loss of the work. Section 59 defines the purposes to which the deposits taken over by the Librarian shall be put—their transference to the permanent collections of the Library of Congress, including the Law Library, or their location in the reserve collections of the Library for purposes of sale or exchange, or their transference to other governmental libraries in the District of Columbia.

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[12] "The penalty for delay clearly specified in section thirteen is adequate for punishment of delinquents and to enforce contributions of desirable books to the Library." (*Washingtonian Publishing Co., Inc. v. Pearson, Allen and Van Rees Press, Inc.*, No. 222, October Term, 1938, 306 U. S. 30, 41); *Joe Mittenthal, Inc. v. Irving Berlin, Inc., et al*, Dist. Ct., S. D., N. Y., March 16, 1923 (291 Fed. 714.)

On February 23, 1939, twenty-four days following the decision of the Supreme Court of the United States in the case of *The Washingtonian Publishing Co., Inc.* v. *Pearson, Allen and Van Rees Press, Inc., et al,* handed down on January 30 of that year, a bill was introduced in the House of Representatives (H. R. 4433) which took into account some of the problems dealt with here. In the course of the hearings held on the bill on March 23, it was said by a member of the Committee, who for years has dealt at first hand with the problems of copyright law, that

> the two principal things which inspired the introduction of this measure are that the Library of Congress is primarily for the Congress, and for the information of the Congress and generally for the public. It is important that material be available for the research, inspection, and perusal of Members of Congress frequently with reference to pending legislation, or matters in which they are interested in the pursuit of their official duties, so that unless copies are deposited there is no access to the works. The second consideration was this: That inasmuch as copyright is a monopoly right, granted by the Constitution, and strengthened by statute, they who enjoy the monopoly should, necessarily, pay sufficient sums for the privilege of enjoying that monopoly to carry on the necessary machinery of copyright through the Copyright Office and otherwise.[13]

Further, in connection with the use of the word "promptly," found by the Court in the above case to be ambiguous, it was stated in the hearings that "one purpose of this bill is to correct that ambiguity" (*ibid*, p. 4).

The bill was, with certain amendments suggested at the hearings, re-introduced on March 24, 1939, under the title, H. R. 5319. It attempted to stimulate prompt deposit by providing that no action could be brought for infringement occurring between the thirtieth day following publication and the date of deposit; and by applying to the case of failure to deposit within six months following publication, the penalties of section 13.

On May 9, 1941 another bill was introduced (H. R. 4703) attempting to stimulate prompt deposit by providing for deposit not later than the date of publication and, further, that no action shall be brought for an infringement occurring between the date of publication and the date of deposit. No further action has been taken on these bills.

Some of these attempted evasions take the following forms:

(*a*) The least complex form of attempted evasion to make prompt deposit or to pay the copyright fees required by the Act consists of the refusal to send to the Copyright Office any deposits or applica-

[13] Hearings before the Committee on Patents, House of Representatives, 76th Cong., 1st Sess., March 23, 1939, p. 3.

tions for registration at all, or until the fact of such failure has in some way become known to the Copyright Office and the recalcitrant copyright owner has been furnished with a request to deposit and register, as preliminary to the issuance by the Register of the formal demand authorized by section 13 in case the request is ignored.

(*b*) Another type of such attempt is supplied by the case of the author and contributor to monthly issues of periodicals whose contributions are copyrighted in his or her name and who, after having published a dozen or more copyrighted contributions of this type in various issues of the periodical, seeks to obtain registration for a dozen or more works subject to copyright on the payment of a single fee of $2.00, which section 61 of the act specifically provides shall be the fee to be paid for registration and certification of any one work subject to copyright. In such case there is no attempt to avoid in the end making the deposit provided in the act, but there is an attempt to avoid the making of deposit promptly as prescribed by section 12. If the Register were to concede that, in such instances as are discussed in this paragraph, the copyright owner were at liberty to wait until he had concluded with the publication of twelve or tweny-four articles published in consecutive months before making the deposit of any one of the copies of the periodicals containing such contributions, requests from members of Congress for copies of material published in periodicals could not be filled and the work of the Card Division of the Library would be to that extent hampered. It is understood that, particularly during this time of emergency, it is of the utmost importance that certain types of contributions be received by the authorities interested at the earliest possible moment.

In such a case as that described above, the intention to evade the payment of the fees prescribed by the act seems clear.

(*c*) Ever since the coming into effect of the act of July 31, 1939, transferring jurisdiction over commercial prints and labels, for the purpose of copyright registration, from the Commissioner of Patents to the Register of Copyrights, strenuous efforts have been directed toward obtaining registration in the Copyright Office of commercial prints and labels as "books" or non-commercial prints. The registration fee for books or non-commercial prints is $2.00. The registration fee for commercial prints is $6.00, corresponding to the fee required by statute from 1874 to July 1, 1940, when the Act of July 31, 1939 became effective. This registration fee is specially contained by that act. It thus occurs that the Register is more or less constantly called upon to decide whether material, registration of claim to copyright in which is applied for as a "book," is not in fact

or in law a "print or label published in connection with the sale or advertisement of articles of manufacture" (Act of July 31, 1939, sec. 3). The specimen books transferred to this office from the Patent Office are of the greatest assistance in determining questions which come up in this way, for they serve as precedents, reflecting what in the judgment of the Commissioner of Patents constitute commercial prints and labels.

(*d*) Steps the result of which would be the evasion, intentional or unintentional, of the deposit provisions are not wholly without their humorous aspect. More than once in the past twelve months the copyright owners of certain works have requested the Library to buy editions of these copyrighted works with two complete copies of the best edition of which the prospective seller was obliged under section 12 to furnish the Library without a drain upon its appropriation and without cost to the American people.

The examples above submitted are no more than straws pointing the direction of the wind. While thousands of copyright owners meet, without urging, the deposit provisions of the statute, thousands certainly do not. This is established by the fact that, in the two fiscal years last past, 5,348 copyrighted works were obtained for the Library of Congress only as the result of formal requests by the Copyright Office. This means that, without any attempt on its part to obtain the information, the Library of Congress has been informed from outside sources, and the Copyright Office has been informed by the Library, of the existence of approximately nine delinquent copyright owners for every working day in the fiscal year. One is inclined to wonder what the answer would have been had either the Library or the Copyright Office been equipped with personnel whose duty it had been to ascertain the extent of the delinquencies in this field.

What the undersigned wishes particularly to call to your attention is that, if Congress desires that the principle which has thus far characterized our copyright legislation—that deposit of copies, and registration of claim to copyright are conditions precedent to complete copyright protection—is to operate as a practical sanction, sections 12 and 13 of the statute must be reinforced by new legislation.

Even assuming that the deposit delinquency of the last fiscal year mentioned above, covering 2,683 copyrighted works, gave a true—instead of a partial—picture of the extent to which the mandatory duty of deposit was evaded during that period, it must follow that the withholding of at least a portion of such works was deliberate. When a publisher has studied the copyright law with sufficient care to know just what to insert by way of copyright notice and just where to put

it in order to make his monopoly stick, it is difficult to assume that, in his perusal of the act, sections 12 and 13 have escaped his attention or that of his counsel.

In 1909 sections 12 and 13 were definitely new legislation. (Report No. 2222, *supra*, p. 374). They materially altered the preceding law. In the opinion of the legislators each section presumably carried an adequate sanction. Under section 12 deposit and registration promptly following publication was made a mandatory duty, but the only legislative sanction for its performance was the provision that, until such performance was effected, no action for infringement could be brought. This was plainly a sanction of inducement, to be followed by the sanction of enforcement set out in section 13. Under this section, if prompt deposit was not effected under section 12, the Register might at any time after publication demand deposit and, on failure to meet the demand, the recalcitrant copyright owner would lose his copyright and be subject to a fine and to the payment to the Library of twice the value of the work.

But, as is shown by the facts heretofore set forth, neither the sanction of section 12 nor that of section 13, nor both taken together, has proved sufficient to reach the mark set by Congress, to wit, deposit and registration of copyrighted works as a condition of the grant of the copyright monopoly, and that fulfillment of this condition shall be a matter of general observance by copyright owners as a whole. Why make "prompt" deposit under section 12, say certain members of the public, if, after their failure to do so has been discovered and demand is made virtually *at any time within the life of the copyright*, they have the right to continue their initial lack of promptness for three months more and then slip the deposit and application in the United States mails and thus avoid paying the penalty prescribed by section 13?

True, Congress provides that the Register of Copyrights may, "at any time after the publication of the work," set the demand period running. But this provision presupposes that the Register shall have knowledge of the existence of the material for which he makes demand. And, in order that the obvious intent of Congress that the obligation of prompt deposit and registration shall be of general observance and application with respect to all copyright owners, the provision presupposes a capacity for omniscience on this point on the part of the Copyright Office which simply does not exist.

To sum up:

The situation as to the enrichment of the Library through copyright deposits is most unsatisfactory both from the factual and legal aspect. The factual situation must depend for its cure upon effec-

tive amendatory legislation. The apparent purpose of Congress that prompt deposit and registration are conditions of the enjoyment of the copyright monopoly "not primarily for the benefit of the author, but primarily for the benefit of the public" (Report 2222, *supra*, p. 374) and shall apply generally to copyright owners as a whole, is not being fulfilled. Evasion of this duty on the part of a large number of the members of the copyrighting public is shown to exist as a matter of official record in this Office, as well as in the records of the Library of Congress. To meet this evil three amendments to the following effect are suggested:

First, an amendment making it obligatory on persons or firms engaged in the business of publishing copyrighted works to furnish both the Librarian of Congress and the Register of Copyrights with a monthly list of copyrighted works published by them.

Under the present set-up it is an established fact that thousands of works are published with copyright notice annually and that annually the duties of deposit and registration are evaded in connection with such publications. What valid objection can those who enjoy the copyright monopoly oppose to informing the government of the monopolies which they unreservedly announce to the public at large by placing a copyright notice on their works? Experience shows that the method provided by the act for furnishing the government with such information—by deposit and registration—has proved markedly inadequate. It should be reinforced by additional legislation which will at least help to carry out the will of the legislators of 1909. The amendment should carry adequate sanctions.

Second, deposit should be required to be made not later than the date of first publication. That was required under the act supplanted by the present statute.[14] There is no hardship in this, for under the present act, where copyright comes into being through the mere fact of publication with notice, adequate deposit is not limited to physical deposit in the Copyright Office, but in the United States mail properly addressed. It is recommended that the deposit provisions be regarded as adequate if deposit is made in foreign mail as well. Congressman Secrest's Bill (H. R. 4703) contains the provision of deposit not later than publication.

Third, sections 12 and 13, even if reinforced by the furnishing to the Library and the Copyright Office of a list of copyright publications above-mentioned, will, of course, not entirely cure the situation. For there will be left a percentage of copyright owners who do not

[14] Report No. 2222, *supra*, p. 374, p. 11.

deposit and who, there is ground to believe, will be likely to remain quiescent until the authorities find out for themselves whether the list has been sent or not. In such cases, where (*a*) deposit and registration have not been performed, coupled with (*b*) failure to provide a list of copyrighted publications, the question of whether there has been a wilful evasion of the act would in the great majority of cases hardly be debatable, particularly where this evasion has continued for sufficient length of time following publication to eliminate the probability that failure to meet with statutory requirements is attributable to negligence alone.

A failure to meet both requirements for six months following publication would, in the opinion of the undersigned, constitute the presumption of deliberate refusal to comply with the act which must, it is thought, be regarded as a condition to the imposition of the penalties of section 13, for it is refusal to comply after notice has been factually received by the recalcitrant copyright owner which is penalized in that section. It is believed that a failure to meet both requirements—deposit and the submission of the list of copyrighted publications—should meet with the penalties of section 13, except that loss of copyright should not follow unless the copyright owner is also the author.

2. *Attempts to Obtain Registration of Editions of Musical Works in the Public Domain*

It may be stated at the outset that any member of the public is free to make any use that he may wish to make of any work in the public domain. He may copy it verbatim or note for note, republish and perform it without asking permission of any man. He may use such work as the basis of creative authorship, but he may not claim copyright in it until the use he makes results in authorship, for the protection afforded by the copyright statute extends only to the writings of "authors." Section 6 of the act specifically provides that compilations or abridgments, adaptations, arrangements, dramatizations, translations or other versions of works in the public domain, or such works if republished with new matter, "shall be regarded as new works subject to copyright under the provisions of this Act." This provision, which operates at once as a grant and as a limitation, must be read in connection with section 4 and section 8, which, by necessary inference if not in express terms, limit copyright protection under the statute to "the writings of authors" and particularly with reference to the provision of section 7 of the act, which states that "no copyright

shall subsist in the original text of any work which is in the public domain."

The problem which confronts the Copyright Office at this time is not the question of registering copyrighted editions of new works resulting from acts of musical authorship based upon works in the public domain. On the contrary, the problem discussed here is the action of the Office on applications for registrations of copyright in editions of classical music of great composers who have long since gone to their reward, where the claim to copyright is based on new editions of the original works as they have come down to us, with occasional changes in isolated measures, or where the changes take the form of fingering, pedaling, added or eliminated marks of expression or the like.

When in the fall of 1937 the attention of the undersigned was first called to a case of this kind, a careful study of all available material having a bearing on the subject was set on foot and is maintained up to this time. Inquiry was also made with respect to office practice, which in this regard to a definite extent did not appear to have kept in step with legal concepts officially expressed.

On several occasions during his incumbency of the position of Register, the undersigned has been informed by the Music Division of the Library that it is extremely difficult and sometimes almost impossible for a resident in this country, except by applying abroad or to the representatives of foreign firms in the United States, to obtain copies of the works of Wagner, Beethoven, Mozart, Rossini, Gounod, Liszt and perhaps scores of other great composers whom it is unnecessary to name, to which the copyright notice provided by the Copyright Act is not attached.

In connection with this whole question an investigation has been undertaken of a very insignificant part of the great mass of material in the Music Division of the Library of Congress in an attempt to obtain some conception of the extent of this particular abuse. A partial picture of the results obtained will be found in the following paragraph. Great care has been taken in connection with the material referred to therein to take only as examples what amount to reproductions of the original work in the public domain. In other words, recognizing the fact that a work which is in the public domain may be lawfully used as the basis for a real arrangement or new version, the examples provided here are not in the nature of such arrangements or new versions. They are to all intent and purposes, as far as the law of copyright is concerned, reproductions of the old work. Nothing which can be justly recognized as a bona fide arrangement or new version—not even a simplified version—has been consciously included

here. It must be borne in mind in connection with the presentation of the material submitted in the following paragraph that no pretense is made that all the so-called "copyrighted" reproductions of these compositions that are contained in the Music Division of the Library of Congress are set out here—or that all existing reproductions "copyrighted" are available in the Music Division.

Since 1874 Mendelssohn's "Spring Song" has been reproduced with copyright notice nine times, the last time in 1935; since 1896 "Frühlingsräuschen" by Sinding, sixteen times, the last time in 1935; since 1890 Paderewski's "Minuet in G," fifteen times, the last time in 1935; since 1892 "La Cinquantaine," by Gabriel Marie, nine times, the last time in 1936; since 1896 Rachmaninoff's "Prelude in C Sharp Minor," Op. 3, No. 2, eighteen times, the last time in 1920; since 1910 "A Maiden's Prayer" by Badarzewska, four times, the last time in 1935; since 1888 Beethoven's "Für Elise," eleven times, the last time in 1917; since 1875 Rubinstein's "Melody in F," sixteen times, the last time in 1935; since 1886 Rubinstein's "Romance in E Flat," Op. 44, No. 1, nine times, the last time in 1913; since 1901 "Con Amore" by Beaumont, eight times, the last time in 1911; since 1886 Schumann's "Träumerei," seven times, the last time in 1935; since 1901 Schumann's "Arabesque," seven times, the last in 1916; since 1898 "To Spring," by Grieg, fourteen times, the last time in 1917; since 1886 Liszt's "Liebesträume," No. 1, five times, the last time in 1911; since 1886 Liszt's "Liebesträume," No. 3, fifteen times, the last time in 1935; since 1867 Chopin's "Nocturne," Op. 9, No. 2, nine times, the last time in 1917; since 1876 "The Two Larks," by Leschetizke, seven times, the last time in 1911; since 1885 Liszt's "Rhapsody No. 2," eleven times, the last time in 1926; since 1883 Tchaikovsky's "Chanson Triste," eight times, the last time in 1936; since 1885 Tchaikovsky's "Barcarolle," ten times, the last time in 1908, since 1892 "The Flatterer," by Chaminade, fifteen times, the last time in 1917; since 1889 Leybach's "Fifth Nocturne," five times, the last time in 1935; since 1884 "Flower Song," by G. Lange, nine times, the last time in 1935.[15]

Now, just what is the effect upon the music-loving and music-using public of the United States of the presence of the copyright notice on a musical classic, let us say Beethoven's "Moonlight Sonata"? That copyright notice, when placed upon a published edition of such work, conveys the message to all persons other than the alleged copyright owner, that, without his permission, they cannot copy this

[15] A file dealing with later material consisting of the correspondence and exhibits in cases of the above nature is being maintained in this Office.

music; they cannot adapt it; they cannot arrange it; they cannot play it in public for profit; they cannot print it, reprint it, publish it or vend it or make any setting of it of any kind. As a matter of fact and law, every citizen of the United States has a legal right to do those things with this music which this copyright notice tells him, by implication, that he may not do. By such copyright notice affixed to the material which is in the public domain, he is effectively "scared off." Before any of the uses above mentioned are made by him, he feels that, in order to enjoy such use, he shall have to apply to the alleged copyright owner for permission to do so. By virtue of the imprint of the copyright notice on music in the public domain, which the alleged copyright owner may have had no right to affix, with the intention of placing the work on the market,[16] every other member of the American public is warned against the use of the material which he has every legal right to make.

It may be suggested that whether or not the public is victimized by such a process is no concern of the Copyright Office. Possibly, but the Copyright Office is definitely of the opinion that it is a matter of vital concern to the American public and to its representatives in Congress. In any event, it becomes of very definite concern to the Copyright Office when the alleged copyright owners seek to obtain government sanction of their attempted monopoly through registration of claim to copyright in what appears to have long ceased to belong to anyone but the people, and through the issuance of certificates of registration over the signature of the Register of Copyrights.

As far back as 1852, when the case of *Jollie v. Jaques et al* (Fed. Cases 7437) was decided by Judge Nelson of the Circuit Court in construing the Copyright Act of August 10, 1846, the court, recognizing the fact that intellectual creation is the basic foundation of copyright, as well as that works in the public domain are available to serve as a basis for a new intellectual creation, stood foursquare on the proposition that such a creation, in order to support a claim of copyright therein, must "be substantially a new and original work; and not a copy of a piece already produced, with additions and variations, which a writer of music with experience and skill might readily make." The authority of this ruling has been steadily recognized in subsequent decisions including several rendered under the present act. The gist of the modern decisions is that copyright cannot exist where the alleged

[16] Section 29 of the Copyright Act: "Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country * * * shall be liable to a fine of one hundred dollars."

"copyright" production based on a work in the public domain remains "the same old tune." [17]

The principle announced in the case of *Jollie v. Jaques* had in 1925 been recognized by the Register of Copyrights at least three years before the effective date of the present act of July 1, 1909. For on December 22, 1925, the then Register, in a letter addressed to an applicant for registration, stated, *inter alia*, that there was no express provision of the Copyright Act to secure copyright in the mere phrasing, editing, fingering or dynamic markings of music, that, with respect to a claim of copyright based upon such editing, etc. made in relation to a musical work, the original music of which is in the public domain

> * * * it is not believed that any such claim would be supported if brought to the scrutiny of a court. We know of no decisions which would justify any such opinion.
>
> I will only add to the above that the present attitude of the Copyright Office is exactly what it has been for the last twenty-five years and more. We have again and again called attention to this matter but music publishers have ignored it and continue to file these claims. It seems desirable in view of the proposal for new copyright legislation, that we should accentuate the danger of trusting to any such claims even if recorded in this office, which action is not an expression of opinion as to the validity of the claims.

As far back as 1917—nearly a quarter of a century ago—the rules of the Copyright Office specifically set out that, while adaptations and arrangements may be registered as new works under the provisions of section 6 of the Copyright Act, "mere transpositions into different keys are not provided for in the Copyright Act." In 1927 this rule was amended to read:

> "Adaptations" and "arrangements" may be registered as "new works" under the provisions of Section 6. Mere transpositions into different keys, "editing," "fingering" or "phrasing" are not provided for in the Copyright Act.

The rule, as thus worded, remained in effect until June 17, 1938, when it was amended to read:

> Registration may also be made under this section [referring to section 6] of "works republished with new matter," but this does not include mere "editing," "fingering" or "phrasing" which are not provided for in the Copyright Act.

Registration of such material is refused, first, on the ground that it would result in registering as a claim to copyright a claim to material which, in the opinion of the undersigned, is obviously not copyrightable; and that, to make such registration, if adopted as a regular policy, would render the records contained in the Copyright Office a

[17] *Norden v. Oliver Ditson Co., Inc.*; and see *Cooper v. James*; *Arnstein v. Marks Music Corp.* (*supra*, p. 373, note 8.)

"crazy quilt" of claims to material which is copyrightable and material which is not and thus defeat the clear purpose of Congress in its effort to obtain an official record of claims of copyrightable matter. Second, that, in the opinion of the undersigned, if registration were made, this Office, as a branch of the Government of the United States, would consciously render itself a party to misleading the public. Third, that, if such registrations were made, the public could never with security claim to have a free right of user in such classical music in the public domain, for any slight change in fingering or dynamics would serve to create a monopoly, which Congress specifically provided in section 7 could not exist and which, in turn, could be renewed in effect *ad infinitum* by further and similar changes, thereby depriving members of the public of the very benefit which it was the purpose of Congress to confer upon them.

In closing with this subject, it should be observed in justice at least to certain music publishers that, in correspondence with this office, they have contended with great vigor and persistence that they have a right, under the present act, to have such material registered by the Copyright Office. Perhaps no better proof of the sincerity of their conviction is to be found than the fact that they continue to publish it with copyright notice.

3. Attempts to Obtain Registration of Obscene, Seditious or Blasphemous Publications

The Copyright Office is not an office of censorship of public morals. In passing upon applications for registration of such material, the only official interest to be exercised is in deciding the question as to whether or not the material is copyrightable and hence registrable.

A well known authority on copyright has observed that, in determining whether a work is entitled to copyright, the courts take cognizance of the question whether it tends to disturb the public peace, corrupt morals or libel individuals; and that the publication of a seditious, blasphemous, immoral or libelous production is a violation of law, and therefore such a work is not entitled to protection as property (Drone, *The Law of Copyright and Playright*, 181, 182). The principle is an established rule of American copyright jurisprudence. Registration of such material, when its nature is brought to the attention of the examiner in the Copyright Office, is refused. The refusal is based on two grounds—first, that, as the Copyright Office construes the Copyright Act, it is not the intent of Congress that the Register of Copyrights shall consciously record claims of copyright in material

which is obviously uncopyrightable; second, that, for the Copyright Office solemnly to record as copyrightable and to certify material so objectionable from the standpoint of public morals and public policy as to subject the "copyright owner" to the possible penalty of five years' imprisonment and fine of $5,000, or both, for sending it through the mails, would present the ridiculous spectacle of one entity of the government (the Copyright Office) purporting to protect *in connection with its publication* material which a much more important entity of the government (the Post Office Department) will not permit to be made the subject of publication through the use of the mails (Sec. 598 of the *Postal Laws and Regulations*).

Examples of obscene or subversive material are preserved in the Copyright Office, not as copyright deposits, but in order that they may be available to inspection at the instance of the Patents Committees of the Senate or of the House or any other agency of Congress or of the government interested in ascertaining what is going on.

In the interests of the American printers and book manufacturers and for the enforcement of the manufacturing provision of the Copyright Act, Congress provided in section 17 of the act that "any person who for the purpose of obtaining registration of a claim to copyright shall knowingly make a false affidavit as to his having complied" with the manufacturing provisions shall, upon conviction thereof, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000.

It would seem that, in the interests of public morals and public policy generally, the copyright law should be amended so as to create an equally effective sanction against attempts to obtain registration of obscene, seditious or blasphemous material in the Copyright Office—in other words, that such an attempt knowingly set on foot should constitute a misdemeanor, carrying a fine, imprisonment or both. Such legislation would seem to be all the more desirable at the present time in view of conditions which might well inspire attempts to obtain copyright—and, consequently, registration of claims to copyright—in subversive works.

The only protection against registration and the issuance of certificates of registration with respect to such material is to be found in the examination of books or pamphlets by Copyright Office examiners. However, due to the fact that from 500 to 800 applications come to the Copyright Office daily, it is obvious that the examination of the contents of any work must necessarily be cursory and that such examination as is made cannot constitute an adequate barrier against registration and certification. It is only with respect to works which, as the

result of this type of examination, are found on their face to be clearly obscene or subversive that recommendations adverse to registration can as a rule be made. It follows that works which may contain subversive material escape detection, are duly registered and certified by this Office, with the result that the "copyright owner" can point to the registration and to the certificate of registration in his possession as *prima facie* evidence of governmental approval of his own malfeasance.

There is no method which occurs to the undersigned whereby, under the present set-up of the Office, these attempts at abuse can be wholly eliminated, even with the aid of curative legislation, but it is believed that such legislation would be bound to act as a specific deterrent at the source. Moreover, such an amendment would effectively do away with the possibility of a defense in such cases based on an apparent governmental acquiescence taking the form of registration and certification in cases where such material failed to reflect its inherent vice on its face.

4. *Attempts to Obtain Registration on False Information Furnished the Copyright Office*

Attention has already been called (*supra*, p. 388) to the fact that, for the purposes of protecting American book manufacturers, the making of false statements in the affidavit setting out the American manufacture is characterized by section 17 of the act as a misdemeanor punishable by fine and loss of copyright.

While, under the above section, Congress established a deterrent against the making of a false affidavit in connection with the statement of facts concerning the American manufacture of a work with respect to which an application for registration of a claim to copyright is submitted, no such deterrent is provided against the making of false representations in connection with statements contained in the body of the application for registration as such. In other words, under the present act an application might be received setting out that the work for which registration of claim to copyright was requested was an original work of author A, although in fact a mere copy of a work in the public domain by an author long since in his grave and hence not subject to copyright at all; and, if the accompanying affidavit contained no false statement in respect to the American manufacture of the copies deposited, no action could be taken against the offender based upon his attempt, successful or otherwise, to impose upon this government and bring about an incorrect

entry as the result of such fraudulent misrepresentations. It would seem that moral turpitude is at least as much a characteristic of a document containing false statements with respect to the supposed right of the claimant to claim registration as it is of a false statement made in the affidavit of American manufacture offered to support the main document.

Such a penal sanction is earnestly recommended in the public interest, for the records of this Office are open to all lawful public uses and the public is entitled to a record of registration of claims of copyright as closely associated to existing conditions of law and fact as the administration of the Copyright Office permits. From this very important aspect it seems that the public is entitled to be guarded, to the extent that the ripe judgment of a wise Congress may dictate, against the recording of false claims of copyright resulting from the submission of false information to the Copyright Office.

To meet this situation, it is recommended that the present act be amended so as to provide adequate legal sanctions directed against the making of false representations to the Copyright Office, either in connection with an application for registration of a claim to copyright or for renewal of copyright, or the recording in this Office of any document whatsoever, and that the amendment should be framed so as to cover two cases—(*a*) that of any person who shall knowingly present to the Copyright Office in these connections any document containing any false statement, (*b*) any person, other than the person actually presenting the same to the Copyright Office, who is responsible for the presence in the document of a false statement made with a knowledge of its falsity.

Recommendations to this general effect have already been made to Congress on numerous occasions. I refer to H. R. 10740, H. R. 10976, H. R. 11948, H. R. 12094 and H. R. 12425, all of the 72nd Congress, first session.

5. Apparent Attempts to Avoid the Operation of Section 13 of the Copyright Act

A demand is made upon the copyright owner under section 13. He pays no attention to the demand within the three months period, which section 13 prescribes as the term within which he must act if deposit and registration via the copyright route is to be made. The matter is taken up with the Department of Justice by the Copyright Office and, even when such action is pending, the delinquent, who by operation of law has ceased to have any copyright in the

work in question, sends to the Copyright Office two copies of the work with an application for registration and registration fee, in which application he incorrectly describes himself as the copyright owner of the work. In some instances, undoubtedly this is done because of a lack of familiarity with the act. However, it is very difficult to conceive that, in some cases at least, such action is not intentionally taken, for the demand itself is so worded as fully to warn the copyright owner that, if the demand is not fulfilled within the statutory period, the copyright is lost, and consequently that an application sent to this Office describing the former copyright owner as the present copyright owner of the work contains a statement radically incorrect. No right to register exists, for there is no longer any copyright to be registered. Particular pains have been taken in the Copyright Office to set up machinery to detect the inadequacy of such applications, which on their face appear to be wholly normal and adequate, for registrations made under these circumstances constitute nullities and, if made, would, both on the record books of the Copyright Office, in the *Catalog of Copyright Entries* and in the form of certificates which almost invariably accompany registrations, give inaccurate information to the public. When a formal demand is issued, a return receipt is always requested and, as far as the undersigned has any knowledge is invariably received by the Office.

THE NEED OF SPEEDY LEGISLATION TO PRESERVE BY AMENDMENT OF SECTIONS 13 AND 17 THE RENEWAL RIGHTS OF AUTHORS

In connection with the preceding numbered heading 5 there is another point which, in the interest of authors and in the interest of a desire to meet the expressed will of Congress, both as reflected in the act and in the statements of the committee which reported the bill which became the present act, calls, in the mind of the undersigned, for prompt remedial legislation.

When the Register is called upon by the Library to obtain the deposit of copyrighted works not yet deposited, he must either make an informal request of the delinquent copyright owner for the deposit of the work and, if the request is ignored, go no further, or proceed with the demand authorized by section 13. That it is his duty to proceed with the demand if it becomes necessary appears unquestionable. If, however, the demand is ignored, section 13 mandatorily provides that "the copyright shall become void."

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The fact is that, as a general rule, copyrights are taken out by publishers and not by authors. This being the case, what, in these circumstances, is to become of the renewal rights of the author?

The answer is that they are destroyed—and destroyed, the undersigned believes, in the great majority of cases—to the possible great loss and damage of a perfectly innocent party.

Section 23 of the act—section 24 now having become without effect with the passage of time—provides that, in the great majority of cases, renewal rights can only be enjoyed by the author, his surviving family, kin or estate.

In discussing section 23, the committee which reported the bill which became the present act stated, *inter alia:*

> Your committee, after full consideration, decided that it was distinctly to the advantage of the author to preserve the renewal period. It not infrequently happens that the author sells his copyright outright to a publisher for a comparatively small sum. If the work proves to be a great success and lives beyond the term of twenty-eight years, your committee felt that it should be the exclusive right of the author to take the renewal term, and the law should be framed as is the existing law so that he could not be deprived of that right.
>
> The present term of twenty-eight years, with the right of renewal for fourteen years, in many cases is insufficient. The terms, taken together, ought to be long enough to give the author the exclusive right to his work for such a period that there would be no probability of its being taken away from him in his old age, when, perhaps, he needs it the most.[18]

The author is the creator of the work. While it is true that copyrights are given,

> not primarily for the benefit of the author, but primarily for the benefit of the public * * * Not that any particular class of citizens, however worthy, may benefit, but because the policy is believed to be for the benefit of the great body of people, in that it will stimulate writing and invention, to give some bonus to authors and inventors.[19]

the fact that such stimulus is given is solely due to the labor and sweat of the creator of the work. As is seen by the above quotation from the committee's report dealing with renewals, as well as from section 23 of the act, Congress definitely recognized that substantial benefits should reward the efforts of those whose works have lived. And yet, by providing that the copyright owner—who in the great majority of cases is not the author—shall, because of *his* failure to meet the requirements of the act, not only lose the copyright but that "the copyright shall become void," it would seem that the statute, in many instances at least, has destroyed with one blow the

[18] Report No. 2222 to accompany H. R. 28192, 60th Cong., 2nd Sess., House of Representatives, p. 14.
[19] *Ibid*, p. 7.

possibility of the enjoyment by the author of those benefits of renewal which Congress in the clearest of terms has intended to preserve in his interest. The author does not transfer his copyright, or the common law right to acquire it, to the assignee of such rights because he wants to but because he must. He must sell his works to live and he must part with them, not on his own terms, but on the terms prescribed by others.

As appears from the Committee report

"It was suggested that the forfeiture of the copyright for failure to deposit copies was too drastic a remedy, but your committee feel that in many cases it will be the only effective remedy * * *" [20]

At the same time, in view of the unquestioned desire so clearly expressed by the committee to protect the renewal rights of the author, the question may well arise as to whether or not, in reaching the conclusion just quoted immediately above, the committee and the legislators may not for the moment have lost sight of the effect which the voiding of the copyright as the result of a delinquency for which the author—when not the copyright owner—was entirely innocent, might have upon a deserving individual who had committed no delinquency at all. And it seems further a matter of reasonable inquiry as to whether or not the purposes of the committee could not be met by an amendment which, while avoiding the possibility of a loss of renewal on the author's part by eliminating the proviso that "the copyright shall become void," might provide an "effective remedy" by penalizing the delinquent copyright owner for failure to fulfill the demand, with the imposition of a fine of not more than $1,000 or less than $500 and the payment to the Library of Congress of twice the amount of the retail price of a copy of the best edition of the work—this amount to be applied by the Librarian of Congress to the acquisition of two copies of the book which is the subject matter of the unfulfilled demand.

Remedial legislation of a similar nature might seem to be called for in connection with section 17. In this section, already referred to (*supra*, p. 388), copyright "shall be forfeited" if the applicant for registration of copyright shall make a false affidavit as to his having complied with the manufacturing requirements set out in section 16. Thus the author who is not the copyright owner stands to lose his renewal rights through the negligence of another with respect to which in the majority of cases the author would be wholly innocent.

COPYRIGHT BILLS AND RESOLUTIONS IN CONGRESS

The following bills, among others, were introduced during the fiscal year, but had not been enacted into law up to June 30, 1941:

S. J. Res. 304. "A joint resolution to define the principle of international reciprocity in the protection of American patents, trademarks, secret formulas and processes, and copyrights by providing a method for assuring the payments of amounts due to persons in the United States from users thereof in countries restricting international payments from their territories. Introduced November 25, 1940 by Senator Davis, of Pennsylvania, and referred to the Committee on Banking and Currency.

H. J. Res. 620. Introduced December 5, 1940 by Mr. Sheridan, of Pennsylvania, and referred to the Committee on Patents. This is identical with S. J. Res. 304.

H. J. Res. 32. "To define the principle of international reciprocity in the protection of American patents, trade-marks, secret formulas and processes, and *copyrights* by providing a method for assuring the payments of amounts due to persons in the United States from users thereof in countries restricting international payments from their territories." Introduced by Mr. Ditter, January 3, 1941; referred to the Committee on Patents. This is also identical with S. J Res. 304 above.

S. J. Res. 3. Introduced by Senator Davis, January 6, 1941 and referred to the Committee on Banking and Currency. Identical with S. J. Res. 304 above.

H. J. Res. 73. Introduced by Mr. Ramsay, January 16, 1941 and referred to the Committee on Patents. Identical with S. J. Res. 304 above.

H. R. 3456. "A Bill to protect the public, sponsors of broadcasting programs, broadcasting stations, performers, and all persons interested in radio from being deprived of the enjoyment by means of radio broadcast of music." Introduced February 18, 1941 by Mr. Martin J. Kennedy, of New York, and referred to the Committee on Interstate and Foreign Commerce.

H. J. Res. 123. Introduced by Mr. Sheridan, February 20, 1941 and referred to the Committee on Patents. Identical with S. J. Res. 304 above.

On April 15, 1941, hearings were held on this resolution before the Committee on Patents of the House and the same printed for the use of the committee. Further hearings were held before the same committee, beginning June 10, 1941.

H. R. 2598. "A Bill to provide a uniform fee for the registration of copyrights." Introduced by Mr. Lanham, January 22, 1941 and referred to the Committee on Patents.

H. R. 3331. "A Bill to amend section 8 of the Copyright Act of March 4, 1909, as amended, so as to preserve the rights of authors during the present emergency, and for other purposes." Introduced by Mr. Kramer, February 13, 1941 and referred to the Committee on Patents. Hearings held on April 17 and printed for the use of the committee.

S. 864. Introduced by Senator Bone on February 13, 1941 and referred to the Senate Committee on Patents. Identical with H. R. 3331 above.

H. R. 3640. "A Bill to amend section 25 of the Act entitled 'An Act to amend and consolidate the Acts respecting copyright', approved March 4, 1909, as amended." Introduced by Mr. Keogh, February 27, 1941 and referred to the Committee on Patents. Identical with the amended section 25 of the Duffy bill S. 3047, 74th Congress, 1st Session which passed the Senate August 7, 1935, with certain amendments. See *Report of Register of Copyrights* for the fiscal year ending June 30, 1935, page 12, with Bill and Report on pages 41–51.

H. R. 3997. "A Bill to amend the Act entitled 'An Act to amend and consolidate the Acts respecting copyright', approved March 4, 1909, as amended, and for other purposes." Introduced by Mr. Sacks, March 13, 1941 and referred to the Committee on Patents.

This bill is based on that of Congressman Daly, H. R. 4871, March 8, 1939, reintroduced by Mr. McGranery on May 8, 1940, H. R. 8160 and again introduced by Mr. McGranery on May 8, 1940 as H. R. 9703. The bill amends in important particulars the general Copyright Act, especially by extending copyright to the performer's interpretive rendition of a musical work, and by providing for design copyright in the case of manufactured products other than for motor cars and their accessories. The pending bill, however, (H. R. 3997) embodies considerable changes in the provisions on the rights of performing artists.

H. R. 4016. "A Bill to reduce the amount of damages for infringement of copyright of musical compositions in certain hotels and other places." Introduced by Mr. O'Brien, of New York, March 14, 1941 and referred to the Committee on Patents.

H. R. 4486. "A Bill to create five regional national libraries and to amend section 12 of the Act entitled 'An Act to amend and consolidate the Acts respecting copyright,' approved March 4, 1909, and for other purposes." Introduced April 23, 1941 by Mr. Collins, of Mississippi, and referred to the Committee on the Library.

This bill would require the deposit of twelve copies of copyrighted books and periodicals, two for each of the regional libraries provided for, in addition to the two now required for the Library of Congress. (The bill is identical with H. R. 3699, 75th Congress, First Session, also introduced by Mr. Collins, January 26, 1937.)

H. R. 4521. "A Bill to amend section 64 of the copyright law (title 17, U. S. C.) so as to make copies or reproductions of prints and labels available upon payment of the required fee." Introduced by Mr. Kramer, April 24, 1941 and referred to the Committee on Patents.

H. R. 4703. "A Bill to amend sections 12 and 13 of the Copyright Act of March 4, 1909, to secure the prompt deposit of copyrightable material into the Library of Congress and prompt registration of claims of copyright in the Copyright Office, and for other purposes." Introduced by Mr. Secrest, May 9 and referred to the Committee on Patents.

H. R. 4826. "A Bill to amend section 8 of the Copyright Act of March 4, 1909, as amended, so as to preserve the rights of authors during the emergency, and for other purposes." Introduced by Mr. Kramer, May 20, 1941 and referred to the Committee on Patents. Similar to H. R. 3331 and S. 864, with changes, especially in the proviso. Reported out from the Committee on Patents May 26. (Report No. 619; passed by the House June 2, and referred to the Senate Committee on Patents, June 3.)

International Copyright Convention

On January 16, 1941, Senator Thomas, of Utah, Committee on Foreign Relations, submitted a report to accompany Executive E, 73d Congress, 2d Session, recommending the Senate to advise and consent to the International Convention of the Copyright Union as revised and signed at Rome on June 2, 1928 (Executive Report No. 1, 77th Congress, 1st Session).

On February 13 this convention was, at the request of Senator George, recommitted to the Committee on Foreign Relations (see *Congressional Record*, February 13, 1941, page 1011).

On April 15 and 17 hearings were held on the convention and printed for the use of the committee.

Respectfully submitted,

C. L. BOUVÉ,
Register of Copyrights

To: ARCHIBALD MacLEISH,
The Librarian of Congress

STATISTICAL SUMMARY, COPYRIGHT OFFICE

EXHIBIT A. *Statement of Gross Receipts, Refunds, Net Receipts and Fees Applied for Fiscal Year Ending June 30, 1941*

Month	Gross receipts	Refunds	Net receipts	Fees applied
1940				
July	$27,097.82	$1,288.95	$25,808.87	$24,555.60
August	27,286.34	1,674.34	25,612.00	25,283.70
September	26,963.00	1,168.60	25,794.40	23,313.60
October	34,956.51	1,528.31	33,428.20	32,703.50
November	29,162.27	1,614.66	27,547.61	28,268.30
December	33,933.78	2,937.88	30,995.90	30,764.10
1941				
January	35,745.77	1,725.07	34,020.70	31,522.80
February	32,232.84	1,534.32	30,698.52	29,571.60
March	33,160.62	1,978.08	31,182.54	30,710.30
April	31,484.84	1,260.22	30,224.62	32,252.20
May	31,066.67	2,020.14	29,006.53	29,989.60
June	31,034.89	1,507.05	29,527.84	28,495.30
Total	374,125.35	20,277.62	353,847.73	347,430.60

Balance brought forward June 30, 1940		$41,303.06
Gross receipts, fiscal year 1941		374,125.35
Total to be accounted for		$415,428.41
Amount refunded	$20,277.62	
Copyright fees deposited as miscellaneous receipts during fiscal year, 1941	352,260.60	
Balance carried to July 1, 1941:		
Balance of fees earned in June 1941 not deposited in Treasury until July 1941	$3,495.30	
Unfinished business	12,270.27	
Deposit accounts	27,124.62	
	42,890.19	
		$415,428.41

EXHIBIT B. *Record of Applied Fees*

Month	Registrations of prints & labels, including certificates		Registrations of published works, including certificates		Registrations of unpublished works, including certificates		Registrations of published photos (no certificate)	
	Number	Fees at $6	Number	Fees at $2	Number	Fees at $1	Number	Fees at $1
1940								
July	154	$924.00	9,447	$18,894.00	3,013	$3,013.00	125	$125.00
August	310	1,860.00	8,944	17,888.00	3,468	3,468.00	131	131.00
September	175	1,050.00	8,681	17,362.00	3,236	3,236.00	98	98.00
October	583	3,498.00	11,664	23,328.00	3,574	3,574.00	159	159.00
November	919	5,514.00	8,557	17,514.00	3,228	3,228.00	73	73.00
December	941	5,646.00	9,813	19,626.00	3,418	3,418.00	153	153.00
1941								
January	657	3,942.00	10,093	20,186.00	4,588	4,588.00	112	112.00
February	629	3,774.00	9,147	18,294.00	5,216	5,216.00	166	166.00
March	602	3,612.00	9,830	19,660.00	4,963	4,963.00	174	174.00
April	897	5,382.00	10,028	20,056.00	4,261	4,261.00	105	105.00
May	595	3,570.00	9,384	18,768.00	4,130	4,130.00	171	171.00
June	690	4,140.00	9,325	18,650.00	3,358	3,358.00	120	120.00
Total	7,152	42,912.00	115,113	230,226.00	46,453	46,453.00	1,587	1,587.00

Month	Registrations of renewals				Total number of registrations	Total fees for registrations
	Number	Fees at $6	Number	Fees at $1		
1940						
July	----------	----------	592	$592.00	13,331	$23,548.00
August	1	$6.00	531	531.00	13,385	23,884.00
September	----------	----------	662	662.00	12,852	22,408.00
October	1	6.00	737	737.00	16,718	31,302.00
November	3	18.00	833	833.00	13,813	27,180.00
December	2	12.00	765	765.00	15,092	29,620.00
1941						
January	----------	----------	1,027	1,027.00	16,477	29,855.00
February	----------	----------	1,010	1,010.00	16,168	28,460.00
March	2	12.00	921	921.00	16,492	29,342.00
April	2	12.00	921	921.00	16,214	30,737.00
May	7	42.00	1,438	1,438.00	15,725	28,119.00
June	1	12.00	886	886.00	14,380	27,160.00
Total	19	114.00	10,323	10,323.00	180,647	331,615.00

EXHIBIT B. *Record of Applied Fees*—Continued

Month	Copies of record		Assignments and copies		Indexing transfers of proprietorship		Notices of user		Search fees	Total fees applied
	Number	Fees at $1	Number	Fees	Number	Fees at $0.10	Number	Fees		
1940										
July	65	$65.00	276	$720.00	1,046	$104.60	1	$1.00	$117.00	$24,555.60
August	81	81.00	309	936.00	1,497	149.70	81	81.00	152.00	25,283.70
September	80	80.00	227	594.00	586	58.60	28	28.00	145.00	23,313.60
October	92	92.00	291	924.00	2,005	200.50	23	23.00	162.00	32,703.50
November	114	114.00	234	690.00	1,143	114.30	35	35.00	135.00	28,268.30
December	83	83.00	233	760.00	961	96.10	48	48.00	157.00	30,764.10
1941										
January	126	126.00	283	1,066.00	2,858	285.80	51	51.00	139.00	31,522.80
February	90	90.00	278	760.00	896	89.60	28	28.00	144.00	29,571.60
March	151	151.00	297	898.00	753	75.30	37	37.00	207.00	30,710.30
April	132	132.00	277	1,060.00	742	74.20	26	26.00	223.00	32,252.20
May	73	73.00	302	1,138.00	3,686	368.60	74	74.00	217.00	29,989.60
June	100	100.00	259	924.00	1,043	104.30	32	32.00	175.00	28,495.30
Total	1,187	1,187.00	3,266	10,470.00	17,216	1,721.60	464	464.00	1,973.00	347,430.60

EXHIBIT C. *Statement of Gross Cash Receipts, Yearly Fees, Number of Registrations, etc., for 44 Fiscal Years*

Year	Gross receipts	Yearly fees applied	Number of registrations	Increase in registrations	Decrease in registrations
1897–98	$61,099.56	$55,926.50	75,545		
1898–99	64,185.65	58,267.00	80,968	5,423	
1899–1900	71,072.33	65,206.00	94,798	13,830	
1900–1901	69,525.25	63,687.50	92,351		2,441
1901–2	68,405.08	64,687.00	92,978	627	
1902–3	71,533.91	68,874.50	97,979	5,001	
1903–4	75,302.83	72,629.00	103,130	5,151	
1904–5	80,440.56	78,068.00	113,374	10,244	
1905–6	82,610.92	80,198.00	117,704	4,330	
1906–7	87,384.31	84,686.00	123,829	6,125	
1907–8	85,042.03	82,387.50	119,742		4,087
1908–9	87,085.53	83,816.75	120,131	389	
1909–10	113,662.83	104,644.95	109,074		11,057
1910–11	113,661.52	109,913.95	115,198	6,124	
1911–12	120,149.51	116,685.05	120,931	5,733	
1912–13	118,968.26	114,980.60	119,495		1,436
1913–14	122,636.92	120,219.25	123,154	3,659	
1914–15	115,594.56	111,922.75	115,193		7,961
1915–16	115,663.42	112,986.85	115,967	774	
1916–17	113,808.51	110,077.40	111,438		4,529
1917–18	109,105.87	106,352.40	106,728		4,710
1918–19	117,518.96	113,118.00	113,003	6,275	
1919–20	132,371.37	126,492.25	126,562	13,559	
1920–21	141,199.33	134,516.15	135,280	8,718	
1921–22	145,398.26	138,516.15	138,633	3,353	
1922–23	153,923.62	149,297.00	148,946	10,313	
1923–24	167,705.98	162,544.90	162,694	13,748	
1924–25	173,971.95	166,909.55	165,848	3,154	
1925–26	185,038.29	178,307.20	177,635	11,787	
1926–27	191,375.16	184,727.60	184,000	6,365	
1927–28	201,054.49	195,167.65	193,914	9,914	
1928–29	322,135.82	308,993.80	161,959		31,955
1929–30	336,980.75	327,629.90	172,792	10,833	
1930–31	312,865.41	309,414.30	164,642		8,150
1931–32	284,719.20	280,964.90	151,735		12,907
1932–33	254,754.69	250,995.30	137,424		14,311
1933–34	258,829.53	251,591.50	139,047	1,623	
1934–35	269,348.81	259,881.70	142,031	2,984	
1935–36	293,149.82	285,206.90	156,962	14,931	
1936–37	295,313.24	280,541.40	154,424		2,538
1937–38	326,326.67	298,779.60	166,248	11,824	
1938–39	330,466.37	306,764.40	173,135	6,887	
1939–40	341,061.35	320,082.90	176,997	3,862	
1940–41	347,125.35	347,430.60	180,647	3,650	
Total	7,557,073.77	7,244,079.60	5,894,368		

EXHIBIT D. *Number of Registrations Made During the Last Five Fiscal Years*

Class	Subject matter of copyright	1940-41	1939-40	1938-39	1937-38	1936-37
A	Books:					
	(a) Printed in the United States:					
	Books proper	12,735	11,976	11,612	11,625	11,244
	Pamphlets, leaflets, etc.	31,187	34,687	33,081	32,708	29,147
	Contributions to newspapers and periodicals	5,845	13,926	9,843	8,195	7,551
	Total	49,767	60,589	54,536	52,528	47,942
	(b) Printed abroad in a foreign language	1,553	2,504	4,086	3,646	3,841
	(c) English books registered for ad interim copyright	565	958	1,122	1,177	1,272
	TOTAL	51,885	64,051	59,744	57,351	53,055
B	Periodicals (numbers)	42,207	40,173	38,307	39,219	38,053
C	Lectures, sermons, addresses	1,362	1,276	1,135	1,034	732
D	Dramatic or dramatico-musical compositions	5,010	6,450	6,800	7,369	7,176
E	Musical compositions	49,135	37,975	40,961	35,334	31,821
F	Maps	1,398	1,622	1,566	1,200	1,198
G	Works of art, models, or designs	2,187	3,081	3,419	3,330	3,002
H	Reproductions of works of art	343	445	130	59	0
I	Drawings or plastic works of a scientific or technical character	2,359	2,817	2,863	3,309	2,981
J	Photographs	2,411	2,590	3,150	3,174	2,191
KK	Commercial prints and labels	7,152	----	----	----	----
K	Prints and pictorial illustrations	3,058	4,699	3,126	3,010	3,875
L	Motion-picture photoplays	822	800	825	873	793
M	Motion pictures not photoplays	976	811	932	1,016	958
RR	Renewals of commercial prints and labels	19	----	----	----	----
R	Renewals of all other classes	10,323	10,207	10,177	9,940	8,589
	TOTAL	180,647	176,997	173,135	166,248	154,424

EXHIBIT E. *Number of Articles Deposited During the Last Five Fiscal Years*

Class	Subject matter of copyright	1940–41	1939–40	1938–39	1937–38	1936–37
A	Books:					
	(a) Printed in the United States:					
	Books proper	25,470	23,952	22,842	22,846	22,350
	Pamphlets, leaflets, etc	62,276	69,374	66,162	65,416	58,295
	Contributions to newspapers and periodicals	5,888	13,926	9,843	8,195	7,551
	Total	93,634	107,252	98,847	96,457	88,196
	(b) Printed abroad in a foreign language	1,553	2,505	4,086	3,646	3,841
	(c) English works registered for ad interim copyright	565	958	1,122	1,177	1,272
	Total	95,752	110,715	104,055	101,280	93,309
B	Periodicals	84,214	80,356	76,414	78,498	76,106
C	Lectures, sermons, etc	1,362	1,277	1,135	1,034	732
D	Dramatic or dramatico-musical compositions	5,648	7,052	7,525	8,217	7,833
E	Musical compositions	59,369	46,152	49,010	42,624	38,590
F	Maps	2,824	3,242	3,114	2,424	2,396
G	Works of art, models, or designs	2,964	4,014	4,084	3,879	3,227
H	Reproductions of works of art	552	647	177	92	0
I	Drawings or plastic works of a scientific or technical character	3,302	3,931	3,813	4,661	4,169
J	Photographs	4,173	4,403	5,544	5,731	4,025
KK & K	Prints, labels, and pictorial illustrations	20,068	7,136	5,677	5,118	7,097
L	Motion-picture photoplays	1,625	1,583	1,638	1,731	1,571
M	Motion pictures not photoplays	1,884	1,533	1,751	1,945	1,839
	Total	283,737	272,041	263,937	257,234	240,894